LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 21 1970
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1223

KARL H. MEYER,

Petitioner,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PAUL E. GOLDSTEIN,
122 South Michigan Avenue,
Chicago, Illinois 60603,

MARSHALL PATNER,
109 North Dearborn Street,
Chicago, Illinois 60604,

Attorneys for Petitioner.

MIDWEST LAW PRINTING CO., CHICAGO 60601, FINANCIAL 6-3988

INDEX

	PAGE
Opinion Below	2
The Record	2
Jurisdiction	2
Questions Presented	3
Municipal Ordinances And Constitutional Provisions Involved	4
Statement	5
Reasons For Granting The Writ	8
Important Constitutional Questions Involved And Conflict With Immediate Prior Decisions Of This Court On The Same Point	8
Conclusion	13
Appendix—(Opinion of the Supreme Court of Illinois)	1a-6a

Table Of Cases

Bouie v. Columbia, 378 U.S. 347 (1964) 10

Brown v. Louisiana, 383 U.S. 131 (1966) 12

Cox v. Louisiana, 379 U.S. 536 (1965) 8, 13

Feiner v. New York, 340 U.S. 315 (1951) 8, 9

Garner v. Louisana, 368 U.S. 157 (1961) 12

Gregory v. City of Chicago, 394 U.S. 111 (1969) 8, 9, 10, 11, 12, 13

Shuttlesworth v. Birmingham, 382 U.S. 87 (1965) 13

Stromberg v. California, 283 U.S. 359 (1931) 13

Terminiello v. City of Chicago, 337 U.S. 1 (1949) 13

Thompson v. City of Louisville, 362 U.S. 199 (1960) .. 11

Watson v. City of Memphis, 373 U.S. 526 (1963) 8

Winters v. New York, 333 U.S. 507 (1948) 13

Wright v. Georgia, 373 U.S. 284 (1963) 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No.

KARL H. MEYER,

Petitioner,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner prays that a writ of certiorari issue to review the judgment of the Illinois Supreme Court entered in the above case on November 26, 1969 insofar as that decision affirms petitioner's conviction under Section 11-33, of the Municipal Code of Chicago. No petition for rehearing was filed.

OPINION BELOW.

The decision of the Illinois Supreme Court is reported at 44 Ill. 2d 1 (1969), and is set out in full as an appendix to this petition.

THE RECORD.

A certified copy of the record below has been filed in this Court.

JURISDICTION.

This petition is presented for review of the judgment of the Illinois Supreme Court entered on November 26, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

QUESTIONS PRESENTED.

Whether a speaker on a public issue who is peaceful:

1. May be prevented from speaking because of the hostile actions of his audience?

2. May be subjected to conviction under an *ex post facto* construction of an ordinance: conviction for failure to obey a police officer where the ordinance under which petitioner was convicted did not proscribe "failure to obey" at the time of his charge and conviction?

3. May be convicted of interference with a police officer for failing to obey an order to stop speaking on a public issue where there is no record evidence of any interference?

4. May be convicted under an ordinance which fails to give adequate notice of whether petitioner's conduct is proscribed, leaves unfettered discretion in the police of whether the petitioner's conduct is unlawful, and permits conviction for speech entitled to First Amendment protection?

MUNICIPAL ORDINANCES AND CONSTITUTIONAL PROVISIONS INVOLVED.

Municipal Code of Chicago, Section 11-33.

Any person who shall resist any officer of the police department in the discharge of his duties, or shall in any way interfere with or hinder or prevent him from discharging his duty as such officer, or shall offer or endeavor to do so, and whoever shall in any manner assist any person in the custody of any member of the police force to escape or attempt to escape from such custody, or attempt to rescue any person in custody shall be fined not less than Ten nor more than One Hundred Dollars for each offense.

United States Constitution, First Amendment.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Fourteenth Amendment.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT.

Petitioner, who wanted to "communicate to the public in Chicago some ideas about the Viet Nam War," held a "Viet Nam Forum". (R. 11, 35) The forum, which was held on several Friday and Saturday nights in June and July, 1967, was an open forum in which anyone was allowed to speak. (R. 39) The forum was held on the public sidewalk in an area of Chicago known as "Old Town", a busy night-time area. (R. 11)

On July 14, 1967, the night in question, the forum began about 8:45 p.m. Petitioner stood on a 5-gallon can and began his talk. (R. 12) There was a large sign behind petitioner and there was a shopping cart filled with pamphlets next to him. (R. 12) Four or five of his associates also spoke and distributed the pamphlets. (R. 13) A crowd of about 100 to 200 persons gathered. (R. 15, 35) The sidewalk was obstructed and pedestrians walked into the street to get around the group.[1] (R. 15, 31) About 11:00 p.m. the crowd had become loud and boisterous, (R. 31) although petitioner's conduct always remained peaceful. He never used any "fighting words." However, several servicemen in uniform argued with petitioner and his friends about the policy in Viet Nam. (R. 36) One of petitioner's associates reported a fight in the crowd to a police officer present. (R. 15) Two

---

[1] Petitioner had attempted to use an adjacent schoolyard as the site of his forum, but the Chicago Board of Education denied his request to use the schoolyard in the evening, on the ground that the light was inadequate and the yard was intended for playground purposes. (R. 38)

spectators tore down the sign and a person sympathetic to petitioner picked it up. (R. 16, 17, 40) A fight was about to ensue over this incident when a police officer appeared and calmed the situation. (R. 17, 41) Some spectators then set fire to some leaflets. (R. 42) The police then dispersed the troublemakers. (R. 17) Petitioner resumed speaking to the remaining 20-30 persons (R. 33) "rather quietly about the ideas that we held, particularly about what the people in Viet Nam, that I had talked to, felt." (R. 43) The police ordered petitioner to move also. (R. 33) Petitioner remained on the can and said: "I will not leave. You can arrest me if you please." (R. 33) Petitioner later testified that the reason he stayed was that he believed "that we had the right to make use of this forum . . . under the right of public assembly." (R. 44) According to the police, when told he was under arrest, petitioner walked to the squad car without protest or incident. (R. 34)

Petitioner was charged with violation of Section 11-33 ("interfering with a police officer") and Section 193-1 ("disorderly conduct") of the Municipal Code of Chicago. At trial, petitioner chose to represent himself, waived a jury and cross examination of the City's witnesses, and put in his own defense.

The court found petitioner guilty on both charges, and held (R. 54):

> "The Court:
>
> By his own testimony and his own admission, the defendant admits he was asked to leave, and he decided not to leave. He asked to be arrested instead.
>
> By his own admission, he got back onto this can—whatever it was—and kept on talking. It is the considered opinion of this Court that defendant is guilty. . . ."

In his post trial motions petitioner claimed that his conduct was constitutionally protected and that he was denied a fair trial. (R. 23) The motions were denied. (R. 23) Judgment was entered on the finding and petitioner was fined $100.00 on the "interfering" charge (Sec. 11-33) and $200.00 on the "disorderly conduct" charge. (Sec. 193-1)

On review, the Illinois Supreme Court reversed the conviction for "disorderly conduct" (Sec. 193-1) but affirmed the conviction for 'interfering" (Sec. 11-33). The Court held that petitioner's speech was producing an imminent threat of uncontrollable violence or riot, even though the record shows that the situation had been calmed and the troublemakers had been dispersed. The Court rejected petitioner's contentions that the arrest and conviction under Section 11-33 violated his rights of free speech and free assembly and that the "interfering" ordinance is unconstitutionally vague and overbroad.

Petitioner seeks review of the Illinois Supreme Court decision insofar as it affirms the conviction under Section 11-33.

REASONS FOR GRANTING THE WRIT—IMPORTANT CONSTITUTIONAL QUESTIONS INVOLVED, AND CONFLICT WITH IMMEDIATE PRIOR DECISIONS OF THIS COURT ON THE SAME POINT.

The Speaker Versus the Hostile Audience.

This case again presents the important First Amendment issue whether a peaceful speaker may be prevented from speaking because of the hostile actions of his audience. The decision of the Illinois Supreme Court is that "the police may order the cessation of otherwise lawful [conduct] where they have made all reasonable efforts to maintain order, but the [conduct] is producing an imminent threat of uncontrollable violence or riot." (App. p. 4a) This is the same ground rejected by this Court in *Gregory* v. *City of Chicago*, 394 U.S. 111 (1969). Now, the Illinois Court has reached the same conclusion by a different, but no less unsupportable route.

The Illinois Court's decision fails to give adequate recognition to the City's "obligation to protect petitioner's constitutional right to talk", *Feiner* v. *New York*, 340 U.S. 315, 326 (1950) (Black, J. dissenting), and gives the police "discretion to silence him as soon as the customary hostility to his views develops." *Id.*, at 329; cf. *Gregory* v. *Chicago*, *supra* at 122 (Black, J. concurring).

The Illinois Court's position is contrary to past decisions of this Court protecting free speech against crowd hostility:

In *Watson* v. *City of Memphis*, 373 U.S. 526, 535 (1963), quoted with approval in *Cox* v. *Louisiana*, 379 U.S. 536, 551 (1965) this Court held that "constitutional rights may not be denied simply because of the hostility to their assertion or exercise."

In *Wright* v. *Georgia*, 373 U.S. 284, 293 (1963) this Court held that "the possibility of disorder by others cannot justify exclusion of persons from a place if they otherwise have a constitutional right to be present." Defendant had a right to be where he was.

In *Gregory, supra,* this Court held that the violent and hostile actions of a rock-throwing, obscenity-shouting mob of 1200 persons could not justify demonstrators' disorderly conduct convictions where the record showed no disorderly conduct on the part of the peaceful demonstrators.

Taken together these decisions establish that a peaceful speaker may not be silenced, excluded, or convicted because of the hostility or violence of his audience. Yet such silencing, exclusion and conviction is precisely what was visited upon petitioner in this case, and these actions were approved by the Illinois Supreme Court. These and similar actions will continue to be approved in Illinois so long as that Court's decision and its rule justifying suppression of speech by the "hostile audience" stands.[1]

---

[1] It is noteworthy that, while the Illinois Court (App., p. 4a) purports to adhere to the view expressed in that Court's *Gregory* opinion, the "hostile audience" standard employed by the Illinois Court in this case offers even less protection to First Amendment rights than that employed in *Gregory* in that (1) the current standard requires that the police make all reasonable efforts to maintain order whereas the *Gregory* standard required the police to make all reasonable efforts to protect the speaker and (3) the current standard fails to include the requirement that the police explain to the speaker the request that he cease speaking. Cf. *Feiner* v. *New York*, 340 U.S. 315, 327 (Black, J. dissenting), "[A] man making a lawful address is certainly not required to be silent merely because an officer directs it. Petitioner was entitled to know why he should cease doing a lawful act. Not once was he told." Petitioner was not told why he should stop talking.

Conviction for Actions Not Prohibited at the Time of Their Commission.

This case presents the problem of the retroactive application of a judicial enlargement of a proscriptive ordinance.

In *Bouie* v. *Columbia*, 378 U.S. 347 (1964) this Court held that persons conducting a sit-in could not be convicted of remaining on store premises after being asked to leave where the statute under which they were charged prohibited only entrance on the premises after notice from the owner prohibiting such entry, but did not prohibit staying after being asked to leave. This Court further held the South Carolina Supreme Court's attempt to apply to the demonstrators retroactively a judicial construction enlarging the statute to cover defendants' actions deprived them of the fair warning guaranteed by the Due Process Clause.

In *Gregory* v. *City of Chicago*, 394 U.S. 111 (1969) where the Illinois Supreme Court had construed the Chicago disorderly conduct ordinance to prohibit failure to obey a police order to disperse even though the ordinance did not define disorderly conduct as "refusal to obey", this Court reversed defendants' convictions, holding (at 112) that "it is as much a denial of due process to send an accused to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence to support that conviction."

These principles are controlling on the instant case and require reversal. Defendant's speech took place in July, 1967. He was tried the same month. The Illinois Court's construction of Section 11-33 was not announced until more than two years later, in November, 1969.

Moreover, the only possible basis on which such construction might have been foreseen—the Illinois Court's construction of the Chicago disorderly conduct ordinance—was not announced until January, 1968, six months after petitioner committed the acts in question.(1)

The "crime" for which petitioner stands convicted was not enumerated in the ordinance at the time of his conduct. It follows that he has been denied due process of law, and the conviction should be reversed.

The Record Is Devoid of Any Evidence to Support the Conviction.

This case presents the due process issue whether a person may be lawfully convicted of an offense for which the record is totally devoid of evidentiary support. In *Thompson* v. *City of Louisville,* 362 U.S. 199 (1960), this Court held that such a conviction violates due process. In *Gregory* v. *City of Chicago,* 394 U.S. 111 (1969), this Court held that conviction of defendant demonstrators for disorderly conduct, when there was no evidence that the demonstrators' conduct was disorderly, violated due process.

In the instant case defendant was charged and convicted under an ordinance which makes it an offense to interfere with a police officer in the discharge of his duty. Yet there is absolutely no evidence of such interference on petitioner's part. The same conclusions hold true under the ordinance as construed by the Illinois Supreme

(1) In March, 1968, eight months after defendant's speech, failure to obey a police order under the conditions laid down in the Illinois Court's *Gregory* opinion was made "disorderly conduct" by the City's enactment of a new disorderly conduct ordinance. See Sec. 193-1(c) Municipal Code of the City of Chicago, enacted March 26, 1968.

Court in that there is no evidence of "an imminent threat of uncontrollable violence or riot." On the contrary, as the Illinois Court recognized (App. p. 2a), at the point of petitioner's arrest, the situation had been calmed and the police had dispersed the persons opposing the petitioner. But whether there was a threat from the crowd or not, there was no act of "interference" by petitioner. The decision of the Illinois Court is therefore in conflict with *Thompson* and *Gregory* and should be reversed.

Conviction Under Overbroad Ordinance.

This case presents the problem of overbreadth. Specifically, (1) petitioner was found guilty in the trial court under the literal language of the ordinance (not the subsequently-announced Illinois Supreme Court's construction of it), and (2) the ordinance is overbroad: it brings within its broad scope acts clearly entitled to First Amendment protection. *Brown* v. *Louisiana,* 383 U.S. 131, 144 (1966), (Brennan, J. concurring), *Garner* v. *Louisiana,* 368 U.S. 157, 186 (1961), (Harlan, J: concurring). Thus, under the ordinance, it is a violation if a person interferes or offers to interfere with a police officer, without standards for what that means, and without any requirement that there be actual interference. Under this broad, indefinite prescription, one could be convicted for innocent interference by inaction or speech. And, indeed, the record (R. 54) shows that it was for his speech—the fact that he continued to speak after being told to stop—that petitioner was convicted.

Under these circumstances, it is apparent that petitioner was convicted for speech clearly entitled to First Amendment protection and that under the principle established in *Stromberg* v. *California,* 283 U.S. 359

(1931) and followed in *Terminiello* v. *Chicago*, 337 U.S. 1 (1949), *Shuttlesworth* v. *Birmingham*, 382 U.S. 87 (1965) and *Gregory* v. *City of Chicago*, 394 U.S. 111 (1969), this Court should grant certiorari and reverse.

The Chicago Ordinance Is Unconstitutionally Vague.

This case also presents the problem of vagueness: petitioner was charged, tried and convicted under a vague ordinance. The ordinance is vague because it failed to give petitioner fair notice of whether his conduct was proscribed, *Winters* v. *New York*, 333 U.S. 507 (1948), because it gave the police unfettered discretion to decide whether and at what point petitioner's conduct became illegal, *Cox* v. *Louisiana*, 379 U.S. 536 at 579 (1965) (Black, J. concurring) and because it failed to provide adequate standards for court and jury to decide the legality of petitioner's conduct. Under these circumstances, petitioner was denied due process and this Court should grant certiorari to vindicate these basic rights.

CONCLUSION.

For the reasons set out above, petitioner asks this Court to grant review and to reverse the Court below.

Respectfully submitted,

PAUL E. GOLDSTEIN,
122 South Michigan Avenue,
Chicago, Illinois 60603,

MARSHALL PATNER,
109 North Dearborn Street,
Chicago, Illinois 60602,

Attorneys for Petitioner.

APPENDIX

Opinion of the Supreme Court of Illinois

Docket No. 41117—Agenda 25—May, 1969.

THE PEOPLE OF THE CITY OF CHICAGO, Appellee, *vs.* KARL MEYER, Appellant.

Mr. JUSTICE KLUCZYNSKI delivered the opinion of the court:

Karl Meyer appeals from a conviction of disorderly conduct and interfering with an officer in the discharge of his duties under chapters 193—1 and 11—33, respectively, of the Municipal Code of Chicago. He was find $200 on the first charge and $100 on the second charge. A constitutional question gives us jurisdiction.

At his trial defendant, who had funds to retain counsel, chose to represent himself, refused appointed counsel, waived a jury and cross-examination of the City's witnesses and put in his own defense. He testified that he wanted to "communicate to the public in Chicago some ideas about the Viet Nam war." He first selected as his site for his "Viet Nam Forum" a school yard located in an area known as "Old Town". However, the Chicago Board of Education denied his request to use the school yard on every Friday and Saturday evening in July and August because the light was inadequate and the yard was intended for playground purposes. When defendant and his associates arrived at the school yard on June 30 an attorney from the school board informed them that they could not use the school yard. They then moved their table, literature and banners on to the side-

walk. A police officer told them they could not erect a table and chairs on the sidewalk. Defendant testified: "So we took down the tables and chairs and proceeded to speak there, and we held the forum that night. And there wasn't any trouble, and there were a lot of officers protecting us and watching and keeping the sidewalk clear. And we held the forum on subsequent nights—July 1st and then the next weekend—Friday and Saturday of the next weekend. In each case there were police officers there and there was no disturbance, and we held the forum." In describing the meeting defendant said, "A lot of people spoke and a lot of people—it's an open forum and we let anyone speak that wanted to speak".

There is no dispute as to the events preceding defendant's arrest on July 14, 1967. About 8:45 P.M. he stood on a 5-gallon can and began his talk. There was a large sign behind him and there was a shopping cart filled with pamphlets next to him. Four or five of his associates also spoke and distributed the pamphlets. A crowd of 100 to 200 persons gathered. The sidewalk was obstructed and pedestrians walked into the street to get around the crowd. About 11:00 P.M. the gathering had become loud and boisterous. Several servicemen in uniform argued with defendant and his friends about the policy in Viet Nam. One of defendant's associates reported a fight in the crowd to officer O'Malley. Two spectators tore down the sign and a person sympathetic to defendant picked it up. A fight was about to ensue over this incident when officer O'Malley appeared and calmed the situation. Some spectators then set fire to some leaflets. The plain-clothed officers finally dispersed the crowd and officer Highland instructed defendant to move also. Defendant got back on the can and said: "I will not move. You can arrest

me if you please." When told he was under arrest, defendant walked to the squad car without protest or incident.

Officer O'Malley testified he had witnessed about 500 demonstrations in the past two years and that in this demonstration the audience, in his opinion, had become agitated. Defendant admitted that the situation had become tense but he was willing to be attacked for the purpose of his cause.

Defendant argues that both ordinances are unconstitutional on their face because they are vague and prohibit conduct protected by the first amendment. This same challenge was leveled at this disorderly conduct ordinance in *City of Chicago* v. *Gregory*, 39 Ill. 2d 47, and at this "resisting or interfering" ordinance in *City of Chicago* v. *Lawrence*, 42 Ill. 2d 460, and we rejected the challenge in each case.

He then argues that neither ordinance can constitutionally be applied to his conduct. The issue he raises is whether the police can prevent him from speaking simply because his audience might react with disorder or violence. This issue, in the context of a demonstration, was raised in *Gregory*. After reviewing and analyzing several Supreme Court decisions, we concluded that the police may not "* * * stop a peaceful demonstration merely because a hostile crowd may not agree with the views of the demonstrators. It is only where there is an imminent threat of violence, the police have made all reasonable efforts to protect the demonstrators, the police have requested that the demonstration be stopped and explained the request, if there be time, and there is a refusal of the police request, that an arrest for an otherwise lawful demonstration may be made."

(39 Ill. 2d 47, 60.) Applying this rationale to the facts of the *Gregory* case we upheld the disorderly conduct convictions.

The Supreme Court reversed these convictions. (*Gregory* v. *City of Chicago*, 349 U.S. 111, 22 L. Ed. 2d 134, 89 S. Ct. 946.) That court observed that a peaceful and orderly march falls within the sphere of conduct protected by the first amendment. It then noted, as we did, that there was no evidence that the march was disorderly. It then concluded, as did we, that the disorderly conduct convictions could not be based on the manner in which the march was conducted.

The court next properly observed that our opinion held the demonstrators "were convicted not for the manner in which they conducted their march but rather for their refusal to disperse when requested to do so by Chicago police." However, because "The trial judge charged solely in terms of the Chicago ordinance" and "Neither the ordinance nor the charge defined disorderly conduct as the refusal to obey a police order" the court concluded that "* * * petitioners were charged and convicted for holding a demonstration not for refusal to obey a police officer." 394 U.S. 111, 947, 22 L. Ed. 2d 134, 136, 89 S. Ct. 946.

The Supreme Court neither approved nor disapproved of our conclusion that the police may order the cessation of otherwise lawful conduct where they have made all reasonable efforts to maintain order, but the conduct is producing an imminent threat of uncontrollable violence or riot. We adhere to the view expressed in our *Gregory* opinion that they may make such an order and that the demonstrators or speakers may be arrested and prosecuted for failure to obey such order.

(Supreme Court Opinion)

The interfering ordinance provides that "Any person who shall resist any officer of the police department in the discharge of his duties, or shall in any way interfere with or hinder or prevent him from discharging his duty as such officer * * * shall be fined not less than Ten nor more than One Hundred Dollars for each offense." The police officers on duty during this "Viet Nam Forum" had a duty both to maintain order and to safeguard first-amendment freedoms. As Justice Black observed, however, "* * * when groups with diametrically opposed, deep-seated views are permitted to air their emotional grievances, side by side, on city streets, tranquility and order cannot be maintained even by the joint efforts of the finest and best officers and of those who desire to be the most law-abiding protestors of their grievances." *People* v. *Gregory*, 394 U.S. 111, 89 S. Ct. 946, 950, 22 L. Ed. 2d 133, 139 (concurring opinion).

The record shows that defendant held his "forum" on several weekends and that the police officers were able to maintain order and to protect the right of defendant and his associates to express their views. The record also shows that on July 14, 1967, there was some violence and a threat of greater violence, that the police had tried to maintain order, and that they ordered the crowd to disperse only after the debate was degenerating to one of physical battle. Defendant was arrested when he wilfully refused to obey the order to disperse and attempted to continue the conduct which was producing the disorder. We hold that defendant was properly convicted of interfering with the police in the discharge of their duty to maintain order.

The conviction for disorderly conduct is subject to the same criticism the Supreme Court made in *Gregory*. The

record indicates to us that defendant was charged and convicted of disorderly conduct because of the manner in which he conducted his "forum".

For the foregoing reasons, the conviction for interfering with the police in the discharge of their duty is affirmed and the conviction for disorderly conduct is reversed.

Affirmed in part and reversed in part.